85-1584

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

UNITED STATES SUPREME COURT

1 FIRST STREET NORTHEAST

WASHINGTON, D.C. 20543

OCTOBER TERM, 1985

PETER S. NIEDZWIECKI,

- Appellant,

-against-

CIRCUIT PROTECTIVE DEVICES,
DIVISION OF WESTINGHOUSE ELECTRIC CORP.

- Appellee.

APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT

APPELLANT'S JURISDICTIONAL STATEMENT

PETER S. NIEDZWIECKI
Appellant, Pro Se
231 West Avenue
Bridgeport, CT 06604
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39pp

QUESTIONS PRESENTED

1. Whether the N.L.R.B.'s final judgment dismissing a complaint is reviewable by a court at least where that judgment concedes that the appellant had demonstrated a prima-facie case, solely because respondent has asserted an alleged legitimate business reason in its defense.

2. Whether the statute of limitations for starting actions under the National Labor Relations Act, Section 301, Title 29 U.S.C. Section 185(a) is governed solely by Delcostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983).

3. Whether the appellant has the right to bring an action under the ruling of Vaca v. Sipes, 386 U.S. 171 (1967).

4. Whether filing a charge with the N.L.R.B. tolls the statute of limitations for filing a civil action. Guerra v. Manchester Terminal, 498 F.2d 641 (1974)

5. Whether a letter to Appellant's congressman tolls the statute of limitations for filing a civil suit.

6. Whether the state of Connecticut statute of limitations on contracts governs the instant case because the contract bargaining agreement contained an unavailable and unused arbitration clause. Auto Workers v. Hoosier 383 U.S. 696 (1966)

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UNITED STATES SUPREME COURT

1 FIRST STREET NORTHEAST

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OCTOBER TERM, 1985

PETER S. NIEDZWIECKI,

- Appellant,

-against-

CIRCUIT PROTECTIVE DEVICES,
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- Appellee.

APPEAL FROM THE UNITED STATES COURT
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Appellant, Pro Se
231 West Avenue
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UNITED STATES SUPREME COURT

1 FIRST STREET NORTHEAST

WASHINGTON, D.C. 20543

PETER S. NIEDZWIECKI

PLAINTIFF-APPELLANT :

PRO-SE : DOCKET NO. 85-7344

v. :

CIRCUIT PROTECTIVE :

DEVICES :

Div. of Westinghouse :

Electric Corp. :

DEFENDANT-APPELLEE :

: March 20, 1986

APPELLANT'S JURISDICTIONAL STATEMENT

1.

(A.) Review is hereby requested in Niedzwiecki vs. Circuit Protective Devices Docket No. 85-7344 (2D Cir. 1985) (in formal opinion) (Copy attached)

(B.) (1) This civil action is brought under § 301 of the Wagner Act Title 29 USC § 185 a

(2) The date of the judgment is November 25, 1985.

(3) The Notice of Appeal was given on February 21st 1986. (copy attached)

(4) Jurisdiction is sought under 28 U.S.C. 2101

(5) The following rulings apply

(a) Associated Builders & Contractors, Inc. etc. v. Irving, 610 F 2d 1221 (5th Cir. 1979)

(b) Bova v. Pipefitters & Plumbers Local 60 554 F 2d 226 (5th Cir. 1977)

(c) Hennepin Broadcasting Associates, Inc. v. N.L.R.B., 408 F. Supp. 932 (D.C.Minn. 1975)

(d) N.L.R.B. v. Brotherhood Of Electrical Workers, 445 F. 2d 1015 (9th Cir. 1971)

(6) National Labor Relations Act, Section 301, Title 29 U.S.C. § 185 (a) provides:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(C.) There are two issues in this case:

(1) Whether N.L.R.B.'s final judgment dismissing a complaint is reviewable by a court at least where that judgment concedes that Appellant had demonstrated a prima- facie case, solely because respondent has asserted an alleged legitimate business reason in it's defense?

(2) Whether the Statute of Limitations for starting actions under National Labor Relations Act, Section 301, Title 29 U.S.C. § 185(a) is governed solely by

Delcostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983)?

(D.) Appellant was employed by Appellee from October, 1975 to September 17, 1981. Concurrently during his employment, Appellant served as the local union president of the United Electrical Radio and Machine Workers Union for one term running from December of 1979 to December of 1980. Appellant was discharged on September 17, 1981. Thus Appellant was discharged after his tenure as union president had ended. However, the N.L.R.B. had specifically found that Appellant had demonstrated a prima-facie case of employer discrimination, in violation of 8(a)(1) 8(a)(3) and 8(a)(4) of the National Labor Relations Act.

However the N.L.R.B. had additionally found that the Appellee had asserted an alleged legitimate business reason for Appellee's actions, and that under the

Wright Line Test, 251 N.L.R.B. 1083 (1980) Appellant could not prevail at a hearing.

Therefore the N.L.R.B. dismissed the complaint. Subsequently, the case was reopened and Appellant believes remained open in Relation to the Statute of Limitations for Filing a court action until May 1st of 1984.

On September 6, 1984, Appellant brought suit in State Superior Court against Appellee.

Appellee obtained removal from the State Court to the District Court for the District of Connecticut on October 4, 1984.

The District Court of Connecticut granted summary judgment in favor of Appellee on March 26, 1985.

Appellant appealed to the U.S. Court of Appeals Second Circuit on April 25, 1985. The Second Circuit rendered

their decision on November 25, 1985, affirming the decision of the District Court.

(E.) (1) This case presents very important constitutional questions as to the limits of the Delcostello 462 U.S. 151 (1983) holding. Where the State Court action is for Breach of Contract rather than for Breach of Fiduciary duty. Specifically should the six month Statute of Limitations apply?

(2) Additionally, this case presents the constitutional issue whether an N.L.R.B. order dismissing a case prior to holding a hearing, is reviewable, by a court at least where it is clear that the Appellant has clearly presented a prima-facie case to the N.L.R.B. against the Appellee.

(F.) Both questions present broad problems of the roles of the Federal and the State Governments respectively in

Interstate Labor Management Relations, under the N.L.R.B. decisions of the United States Supreme Court.

Respectfully submitted,

By_____

Peter S. Niedzwiecki
231 West Avenue
Bridgeport, CT 06604
(203) 336-4075
APPELLANT

At Bridgeport, Connecticut
March 20, 1986

APPENDIX

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

PETER S. NIEDZWIECKI	)	
PLAINTIFF	)	
v.	)	CIVIL NO. B84-648
CIRCUIT PROTECTIVE DEVICES, Div. of Westinghouse Electric Corp.	)	NOTICE OF APPEAL
	)	April 25, 1985

NOTICE OF APPEAL

Notice is hereby given that I Peter S. Niedzwiecki, plaintiff above named, hereby appeals to The United States Court of Appeals for the Second Circuit from the summary judgment which order is dated March 26, 1985 and entered in the clerk's office in New Haven, Connecticut, on March 26, 1985.

By _____

Peter S. Niedzwiecki
231 West Avenue
Bridgeport, CT 06604
(203) 336-4075
PLAINTIFF

Bridgeport, Connecticut
April 25, 1985

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PETER S. NIEDZWIECKI)

v.) CIVIL NO. B84-648

CIRCUIT PROTECTIVE DEVICES, Div. of Westinghouse Electric Corp.)

MEMORANDUM OF DECISION

Plaintiff initially brought this action pro se in state court on or about September 6, 1984. The action was removed to federal court on petition by defendant, pursuant to 28 U.S.C. §§ 1441(a) and (b) and 1446. Plaintiff's complaint, liberally construed, alleges that he was discharged by the defendant on September 17, 1981, in retaliation for his union activities and in violation of the collective bargaining agreement ("CBA") then in effect between the defendant and the United Electrical Radio and Machine

Workers of America (the "Union"). Because the plaintiff has responded to the motion to dismiss by submitting matters outside the pleadings, the motion shall be treated as one for summary judgment. Rule 12(b), Federal Rules of Civil Procedure.

The defendant has attacked plaintiff's claims of retaliation as being pre-empted by the National Labor Relations Act ("NLRA"), 29 U.S.C. § 158, which vests exclusive jurisdiction to hear such claims in the National Labor Relations Board (the "NLRB"). Defendant also moves to dismiss the allegations based upon breach of the CBA as time-barred. Because the court agrees with the legal arguments presented by defendant, the motion to dismiss is granted.

I. Factual Background

Plaintiff was employed by defendant from 1975 until his discharge in September of 1981. During a period of his employment by defendant, plaintiff served as president of his local union. After losing his bid for re-election as local president, plaintiff alleges that he became the target of continuing harassment by defendant until he was ultimately discharged for failing to complete an assignment. Plaintiff's local union appealed plaintiff's dismissal through the third level of the grievance procedure established by the CBA. When the defendant denied the grievance, the Union chose not to proceed to arbitration despite plaintiff's request that it do so.

Plaintiff filed charges with the NLRB, claiming that he was discharged in retaliation for his union activity. On April 20, 1982, the NLRB's investigating

officer found insufficient grounds to substantiate plaintiff's charges. Plaintiff's appeal of this determination was denied on June 23, 1982. Plaintiff's motions for reconsideration were also denied on September 9, 1982, and again on November 23, 1983. On March 20, 1984, plaintiff wrote to his congressman, requesting intervention on his behalf with the NLRB. On May 1, 1984, plaintiff's congressman wrote back indicating that he was unable to provide any further assistance.

II. Retaliation Claim

Part of plaintiff's complaint appears to claim that his discharge was in retaliation for his union activities and discrimination against him as a union member. If true, the defendant's actions would be barred by sections 8(a)(3) and (4) of the NLRA, 29 U.S.C. §§ 158(a)(3) and (4). Charges which are "arguably

subject to § 7 or § 8 of the Act" are within the exclusive jurisdiction of the NLRB. San Diego Unions v. Garmon, 359 U.S. 236, 345 (1959). Plaintiff did, in fact, bring these charges before the NLRB, which found that defendant did not discharge plaintiff in violation of the NLRA. If plaintiff was dissatisfied with the NLRB's ruling, his sole recourse was to appeal that ruling to the Second Circuit Court of Appeals rather than to bring an action de novo in either federal or state court. 29 U.S.C. § 160(f). Plaintiff's claims of retaliation and discrimination must therefore be dismissed for lack of subject matter jurisdiction.

III. Breach of CBA Claim

Plaintiff's complaint also alleges that his discharge was in violation of the CBA. Such a claim is cognizable under section 301 of the NLRA, 29 U.S.C.

§ 185. Vaca v. Sipes, 386 U.S. 171, 179-180 (1967); Smith v. Evening News Assn., 371 U.S. 195, 200-01 (1962). The Supreme Court has recently ruled that a complaint, brought against both an employer for breach of a CBA and a union for breach of its duty of fair representation, is governed by the six-month limitation period of section 10(b) of the NLRA, 29 U.S.C. § 160(b). DelCostella v. International Brotherhood of Teamsters, ____ U.S. ____, 51 U.S.L.W. 4693 (1983). Although the instant action does not name the Union as a defendant, the CBA in question, like that involved in DelCostello, involved a grievance procedure with an agreement to arbitrate. This case is therefore different from Auto Workers v. Hoosier, 386 U.S. 696 (1966) in which the Supreme Court held that a suit by a union against an employer for breach of a CBA, which did not contain an agreement to

arbitrate, was governed by the state limitations periods for actions on contracts. There would appear to be no valid reason to extend the limitations period beyond that required by DelCostello simply because plaintiff has failed to include the union as a defendant. In fact, because the CBA contains an agreement to arbitrate, plaintiff may not recover against the defendant unless he proves that his Union breached its duty for fair representation in handling his grievance. Vaca v. Sipes, 386 U.S. 171, 186 (1967); DelCostello, supra at 4696. It is therefore appropriate to apply the six-month limitations period established by DelCostello for a "hybrid § 301/fair representation claim." Id. at 4697.

Plaintiff's argument that his cause of action did not accrue until his congressman responded to his letter is without merit. A cause of action for

wrongful discharge under a CBA accrues when the plaintiff knew, or should have known, that his discharge became final. Metz v. Tootsie Roll Industries, Inc., 715 F.2d 299, 303 (7th Cir. 1983). In this case, the plaintiff's discharge became final when the Union chose not to pursue the grievance any further. Therefore, plaintiff's cause of action accrued when he learned that the Union would not pursue the grievance. From his own statement, this occurred no later than early 1982. Applying the six-month limitations period of § 10(b), plaintiff's action was time-barred by the time this suit was filed in September, 1984.

Plaintiff has argued that his proceeding before the NLRB tolled the limitations period. The court is unpersuaded that plaintiff's claim under § 301 was within the jurisdiction of the NLRB so as to justify tolling of the

limitations period. However, even if the NLRB proceeding tolled the running of the statute of limitations, this proceeding terminated, at the very latest, on November 23, 1983, when the NLRB denied plaintiff's second request for reconsideration. Therefore, giving plaintiff the benefit of all doubts, his suit was filed over nine months after the completion of the NLRB proceeding, and was time-barred.

Plaintiff has also argued that his writing of a letter to his congressman should also toll the limitations period. Although writing to one's congressman may prove to be an effective way to pierce through governmental inaction, there is no basis in law for such a letter to toll the limitations period, absent some representation by the congressman misleading the individual regarding the accrual of his cause of action. The

court finds there is no basis to toll the limitations period because of plaintiff's letter to his congressman.

There being no disputed factual issues regarding when the plaintiff's cause of action accrued, it is appropriate to grant summary judgment in favor of defendant.

IV. Conclusion

The allegations of plaintiff's complaint alleging that his discharge was based upon discrimination and retaliation for his union activities are dismissed for lack of jurisdiction. Summary judgment is granted to defendant with respect to plaintiff's allegations of breach of the CBA. Accordingly, judgment shall enter in favor of defendant.

SO ORDERED.

ELLEN BREE BURNS
UNITED STATES DISTRICT JUDGE

Dated at New haven, Connecticut, this 21st day of March, 1985.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PETER S. NIEDZWIECKI	)	
v.	)	CIVIL NO. B84-648 (EBB)
CIRCUIT PROTECTIVE DEVICES, Div. of Westinghouse Electric Corp.	)	

SUMMARY JUDGMENT

This cause came on for consideration on defendant's motion to dismiss before the Honorable Ellen Bree Burns, United States District Judge, and a Memorandum of Decision having been filed on March 22, 1985, granting summary judgment to the defendant.

It is ORDERED, ADJUDGED and DECREED that summary judgment be and is hereby entered in favor of the defendant.

Dated at New Haven, Connecticut, this 26th day of March, 1985.

KEVIN F. ROWE

CLERK, UNITED STATES
DISTRICT COURT

BY _____
DEPUTY IN CHARGE

WF/1k1

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 25th day of November, one thousand nine hundred and eighty-five.

Present:

HONORABLE WILFRED FEINBERG,

Chief Judge

HONORABLE WALTER R. MANSIFLD,

HONORABLE JAMES L. OAKES,

Circuit Judges.

PETER S. NIEDZWIECKI,

Plaintiff-Appellant

- against - 85-7344

CIRCUIT PROTECTIVE DEVICES,
DIVISION OF WESTINGHOUSE ELECTRIC
CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by appellant pro se and by counsel for appellee.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said district court is AFFIRMED.

1. The district court construed appellant's complaint to state claims of discharge and harassment in retaliation for union activities and in violation of the collective bargaining agreement. As

to the former claim, we find that it was properly dismissed by the district court for lack of subject matter jurisdiction. These claims are clearly within the exclusive jurisdiction of the NLRB. San Diego Building Trades Council v. Garmon, 359 U.S. 236, 245 (1959). It should be noted, however, that one aspect of the district court's discussion of this issue requires further comment. The judge's opinion contained a suggestion that, if appellant objected to the NLRB General Counsel's failure to issue a complaint, appellant could have appealed that decision to this court. It is well established that an NLRB decision not to issue a complaint is not subject to appellate review. United Electrical Contractors Assoc. v. Ordman, 366 F.2d 776 (2d Cir. 1966) (per curiam), cert. denied, 385 U.S. 1026 (1967).

2. As to appellant's claim that the collective bargaining agreement was breached, we find that it was also properly dismissed by the district court as barred by the statute of limitations. The court correctly determined that the applicable limitations period is the six-month period contained in section 10(b) of the National Labor Relations Act, see DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151(1983), and that more than six months had passed before appellant filed his complaint. Appellant argues that filing of a charge with the NLRB tolls the statute of limitations. We need not decide this issue, however, since, even if tolling applied, the complaint was still time-barred. The limitations period could at most have been tolled through November 23, 1983, when appellant's second request for reconsideration

was denied by the Board. This is more than nine months before the complaint was filed. We note that appellant was represented by counsel when he received the second denial of reconsideration. Finally, we find that there is no basis for the claim that the tolling period should run until appellant received a response from his congressman indicating that nothing more could be done.

3. We have considered all of appellant's arguments and find they are without merit.

WILFRED FEINBERG, Chief Judge

WALTER R. MANSFIELD,

JAMES L. OAKES,
Circuit Judges

UNITED STATES COURT OF

APPEALS

UNITED STATES COURTHOUSE

FOLEY SQUARE

NEW YORK 10007

PETER S. NIEDZWIECKI PLAINTIFF-APPELLANT PRO-SE v. CIRCUIT PROTECTIVE DEVICES, Div. of Westinghouse Electric Corp.	)	DOCKET NO. 85-7334 FEBRUARY 19, 1986

NOTICE OF APPEAL

Notice is hereby given that I Peter S. Niedzwiecki, Plaintiff-Appellant above named, hereby appeals to The United States Supreme Court from the judgment which order is dated November 25, 1985 and entered in the clerk's office of The United States Court of Appeals Second

Circuit, Foley Square, New York, on November 25, 1985, in accordance with 28 U.S.C. Section 2101.

By _____

Peter S. Niedzwiecki
231 West Avenue
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(203) 336-4075
PLAINTIFF-APPELLANT

At Bridgeport, Connecticut
February 19, 1986